IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 25719 of 2006(J)

PETITIONER:

PARAMESWARAN NAIR,
SINDHU NIVAS, NALAMCHIRA P.O.,
TRIVANDRUM.

BY ADV. SRI.MVS.NAMBOOTHIRY
SRI.P.RAHIM

RESPONDENTS:

MADHUSOODANAN, S/O.LAKSHMANA PANICKER,
M.S.BUNGALOW, KOTTAMUGAL, NALAMCHIRA P.O.,
TRIVANDRUM.

BY ADV. SRI.D.KISHORE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.25719/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER IN OS. 92/04 OF THE MUNSIFF'S COURT, TRIVANDRUM.

EXT.P2:- COPY OF THE COMMUNICATION DT. 31.7.95 ISSUED BY THE DISTRICT COLLECTOR.

EXT.P3:- COPY OF THE JUDGMENT IN OS. 824/95.

/TRUE COPY/

P.A. TO JUDGE

tss

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

W.P.C. NO. 25719 OF 2006

= = = = = = = = = = = = = = =

Dated this the 11th day of July, 2007.

J U D G M E N T

This writ petition is filed against the order of the Principal Munsiff, Trivandrum in O.S.92/04. The question that had arisen for determination is whether the civil Court has jurisdiction to entertain the suit.

2. Admittedly the property in dispute is governed by the provisions of Service Inam Lands Act. The plaintiff herein obtained an order in his favour from the duly authorized authority in the year 1994 and the defendant in the suit has preferred an appeal in the year 1995 and the order of first authority stands stayed till the disposal of the appeal petition. So, the factual matrix will again goes back to the stage of the determination of the right under the Service Inam Lands Act of 1981.

3. The learned counsel for the writ petitioner brought to my notice Section 18 of the Act which reads as follows:

> "No civil Court shall have jurisdiction to decide or deal with any question or to determine any matter which is by or under this Act, required to be decided or deal with or to be determined by any officer or authority under this Act".

He would contend that the dispute that has to be resolved by the civil Court is regarding the entitlement of the person to have assignment under the Service Inam Lands Act and therefore he canvasses for the position that Section 18 will be a bar for entertaining the suit by the civil Court.

3. On the other hand, the learned counsel for the respondent would submit that he is already armed with an order in his favour by the authority and he has only sought for a declaration and consequential reliefs and recovery of possession and therefore the question of considering the issue under the Service Inam Lands Act may not strictly arise and further there is no express bar of jurisdiction or implied bar of jurisdiction under Section 9 of the CPC so as to oust the jurisdiction of the civil Court. In support of his

contention he had relied upon certain decisions of this Court. The Full Bench of this Court in ***Antony v. Thandiyode Plantations (1995 (2) KLT 512(FB), Subramoniam v. Sreenivasan 1971 KLT 699 and Walton v. Cochin Stock Exchange Ltd. 1995(1) KLT 81***. In the decision reported in (1995 (2) KLT 512 the learned Full Bench of this Court held that,

> "The exclusion of the jurisdiction of civil Courts to entertain a civil case cannot be assumed unless a particular statute contains an express provision to that effect or leads to a necessary and inevitable implication of that nature".

4. In order to determine the jurisdiction question all the broad aspects of the case are also to be considered. Now, the suit is one for declaration and recovery of possession. The declaration is to the effect that the plaintiff is entitled to the property and the recovery of possession is on the strength of his title. It can be decided only on the eligibility of the plaintiff to get assignment under the Service

of Inam Lands Act. So, if the case is to be entertained by a civil Court what the civil Court has to adjudicate on the question of declaration of title is whether this person is entitled to an order under the Service of Inam Lands Act or not. So, the direct and solid question to be considered is the entitlement under the said Act. There is a taboo under Section 18 of the Act for the civil Court for the reason that such matters are to be decided by the authorities under the Act and not by the civil Court. Therefore, without determining who is entitled to the land under the Service Inam Lands Act, the question of declaration of title cannot be decided in a case of this nature. Therefore, though the suit is couched for a simple declaratory relief and recovery of possession what is sought to be attempted is to get a declaration regarding the entitlement of the plaintiff to have an order under the provisions of the Service Inam Lands Act which is specifically tabooed by Section 18 of the Act. Therefore, I find that there is a bar under Section 18 of the Act and the civil Court shall not have jurisdiction to decide

the same. I will further say in this case when the operation of the order passed by the authority is stayed by a statutory authority competent to do so and when ultimately the appeal is disposed of either in favour or against, it will conclude the matter. Suppose the appeal is dismissed, naturally the plaintiff will be entitled to the property. It will show that he has got right under the Service Inam Lands Act and if the appeal is allowed it goes without saying that he may not have right under the said Act. I, therefore, disagree with the argument of the learned counsel for the respondent that there is no express or implied bar of jurisdiction. What is attempted to be or sought to be established through a civil Court is a matter which is exclusively to be dealt with by the authorities under the Service Inam Lands Act and therefore there is express bar of jurisdiction and the Court below has erred in arriving at a conclusion otherwise. Therefore, the order under challenge is set aside and I hold that the suit is not maintainable and further hold that the moment the appellate authority decides the case in accordance with the

provisions of the Service Inam Lands Act, unless it is further challenged as per the statutory authorities, it will have a binding effect and the person in whose favour the appeal is disposed of will have right over the property unless and until it is varied by the authority contemplated under the Act.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-